

7-A

**CITY OF NEWARK
DELAWARE
PUBLIC HEARING
NOTICE**

May 12, 2008 - 7:30 P.M.

Pursuant to Chapter 32, Zoning, Section 32-78, and Section 32-18(b)(14) Code of the City of Newark, Delaware, notice is hereby given of a public hearing in the Council Chamber, Newark Municipal Building, 220 Elkton Road, on Monday, May 12, 2008 at 7:30 p.m., to consider the request of Schlosser & Dennis, L.L.C. for the following Special Use Permits that would apply to the proposed building addition to be constructed between the buildings at 173 E. Main Street (Days of Knights) and 175 E. Main Street (Ali Baba Restaurant):

1. A Special Use Permit to allow an apartment in BB District, with certain conditions imposed by the Planning Commission; and
2. A Special Use Permit to allow the sale of alcoholic beverages for consumption on the premises of a building addition between the properties at 173-175 E. Main Street, with certain conditions imposed by the Planning Commission.

Patricia M. Fogg, CMC
City Secretary

/pmf

Advertised: **Newark Post – April 25 & May 9, 2008**
Direct Notices Sent – April 25, 2008

**CITY OF NEWARK
DELAWARE**

PLANNING DEPARTMENT

April 14, 2008

TO: Mayor and Members of Council

VIA: Roy H. Lopata, Interim City Manager *R. H. Lopata*

FROM: Maureen Feeney Roser, Interim Planning Director *Maureen Roser*

RE: Parking Waiver and Special Use Permits for an Upper Floor Apartment and the Sale of Alcoholic Beverages for Consumption on the Premises for a Building Addition Between the Properties at 173-175 E. Main Street

At their regularly rescheduled meeting held April 1, 2008, the Planning Commission took the following action:

MOTION BY DRESSEL, SECONDED BY McDOWELL, THAT THE PLANNING COMMISSION APPROVE THE 173-175 E. MAIN STREET REQUIRED FIVE SPACE PARKING WAIVER; AND FURTHER, THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL APPROVE:

- A. THE 173-175 E. MAIN STREET SPECIAL USE PERMIT FOR AN APARTMENT IN THE BB DISTRICT, WITH THE RELEVANT CONDITIONS IN THE PLANNING DEPARTMENT REPORT, AND SHOWN ON THE TETRATECH PLAN DATED FEBRUARY 20, 2008, WITH THE ADDITIONAL CONDITION THAT THE PROPERTY BE DEED RESTRICTED TO ALLOW ONLY TWO TENANTS TO RESIDE IN THE APARTMENT AND THAT A CROSS EASEMENT OR OTHER ARRANGEMENTS ARE MADE TO ENSURE ACCESS TO THE EXISTING PARKING AREA; AND,
- B. THE 173-175 E. MAIN STREET SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES, WITH THE RELEVANT CONDITIONS CITED IN THE PLANNING DEPARTMENT REPORT, AS SHOWN ON THE TETRATECH PLAN, DATED FEBRUARY 20, 2008.

VOTE: 6-0

AYE: BEGLEITER, DRESSEL, McDOWELL, OSBORNE, RUSSELL, SHEEDY

NAY: NONE

ABSENT: BOWMAN

MOTION PASSED UNANIMOUSLY

**CITY OF NEWARK
DELAWARE**

PLANNING DEPARTMENT

April 8, 2008

TO: Mayor and Members of Council

VIA: Roy H. Lopata, Interim City Manager *R. H. Lopata*

FROM: Maureen Feeney Roser, Interim Planning Director *Maureen Feeney Roser*

RE: 173-175 E. Main Street Parking Waiver and Special Use Permits

I have attached the Planning Commission's recommendation, the Planning Department report, and applicant's supporting materials for a parking waiver and two special use permits for a proposed building addition to be constructed between existing buildings at 173-175 E. Main Street. The building addition is to be leased for the expansion of the Ali Baba restaurant currently located at 175 E. Main Street, and to add one two-bedroom apartment to the building addition's second floor. The applicants are also applying for the BB required special use permit for an upper floor apartment and for Ali Baba Restaurant's sale of alcoholic beverages in the addition. Please be advised that the applicants also sought a five space parking waiver for the project.

A summary of the revised plan for the project follows:

Proposed Development

The applicants are requesting a special use permit for a second floor apartment and a special use permit for the sale of alcoholic beverages on the first floor of the new addition. They also applied for and received approval from the Planning Commission for a five space parking waiver for the project.

Planning Department

The Planning Department's recommendation was for the Planning Commission to approve the 173-175 E. Main Street parking waiver and to recommend that City Council approve the project with staff suggested conditions.

Planning Commission

The Planning Commission reviewed the 173-175 E. Main Street proposal at its April 1, 2008 meeting. The Planning Commission unanimously approved the Planning Department's recommendations and included additional Commission suggested conditions. In particular, because the applicant agreed to deed restrict the property to a maximum of two tenants, instead of four tenants, the Planning Commission decided to

restrict the apartment to no more than two tenants. The Commission also recommended that those two tenants be informed in writing that no reserved off-street parking will be available at the 173-175 E. Main Street site for their use. The Planning Commission also suggests that this verbiage be placed into the remaining apartment leases for Danneman and Schlosser Dennis, LLC portion of Traders Alley adjacent to the site.

Attached please find the supporting materials necessary for Council review of this matter.

MFR/ed
Attachments

**CITY OF NEWARK
DELAWARE**

PLANNING DEPARTMENT REPORT

March 19, 2008

**PARKING WAIVER AND SPECIAL USE PERMITS:
173-175 E. MAIN STREET**

On February 28, 2008, the Planning Department received applications from Schlosser & Dennis, L.L.C., for a parking waiver and special use permits for a proposed building addition to be constructed between their existing buildings at 173 and 175 E. Main Street. The applicant's building addition is to be leased for an expansion of the Ali Baba Restaurant currently located at 175 E. Main Street and to add one two-bedroom apartment to the building addition's second floor. The applicants are applying for the required BB zoning special use permit for the upper floor apartment and a special use permit for the Ali Baba Restaurant's sale of alcoholic beverages in the new addition. The applicants are also applying for the required five space parking waiver.

Please see the attached 173-175 site development plan, submitted on behalf of the applicants by Tetra Tech, Inc., as well as the applicants' supporting letter.

The Planning Department's report on this project follows:

Property Description and Related Data

1. Location:

The proposed two story addition to be constructed between 173 and 175 E. Main Street is located in the alleyway between these two buildings with a small portion of the addition extending to the rear of the 175 E. Main Street building.

2. Size:

The total site owned by Schlosser & Dennis, L.L.C., at this location, is 1.0161 acres in size; the addition will occupy approximately .0262 acres.

3. Existing Land Use:

Paved alley between two buildings fronting on E. Main Street.

4. Physical Condition of the Site:

This is a developed property that currently serves as a walkway from a rear parking area to E. Main Street.

In terms of topography, the site is quite level with almost no discernable slope.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the 173-175 E. Main Street site consists of Matapeake Sassafras Urban Land Complex soil. The Natural Resources Conservation Area indicates that this is disturbed soil that has been used for development purposes; no development limitations for the use proposed are indicated.

5. Planning and Zoning:

The 173-175 E. Main Street property is zoned BB. BB is a central business district zone that permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.

- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, other than off-street parking for the change in use at the site, the 173-175 E. Main Street development plan meets all the applicable Zoning Code specifications. Based on the applicants' submittal, the plan would normally require five additional off-street spaces.

In addition, regarding area requirements, because a restaurant with alcoholic beverages is proposed to be expanded to the 173-175 E. Main Street alleyway, a Council granted special use permit is required and the following regulations will apply.

“Facilities selling alcoholic beverages for public consumption on the premises that are less than 300 feet measured along a straight line from the facility selling alcoholic beverages to the nearest property line of a church, library, school, nursing home, hospital, dormitory or lot zoned residential (RH, RT, RS, RD, RM, RA, RR, AC) shall be permitted, except as otherwise provided therein, subject to the following special requirements [this property is less than 300 feet from the St. John's Roman Catholic Church at the intersection of E. Main and S. Chapel Streets]:

(1) Live night club or floor show type entertainment defined as electronically amplified musical dance, cabaret, or comedy performances that may be accompanied by dancing by patrons shall not be permitted, except that one person electronically amplified performances intended as accessory or background music or non-electronically amplified performances shall be permitted. Permitted live entertainment shall not include adult entertainment as defined in this chapter. Full restaurant service as defined in this section, shall be provided with all permitted live entertainment.

(2) There shall be no carry-out liquor service.

(3) No bar facilities, defined as any counter in which alcoholic beverages may be stored, displayed, prepared, and served, and at which patrons sit and/or stand and consume alcoholic beverages, shall be permitted.

(4) There shall be no less than 50 seats in the facility.

(5) There shall be no alcoholic beverage promotional activities that encourage excessive consumption on the premises. Happy hours,

reduced price alcoholic beverage specials, or similar alcoholic beverage promotional activities shall only be permitted where the service of such specials is restricted solely to seated patrons who shall also be required to order food as further defined as full restaurant service in this section. Such alcoholic beverage specials, in addition, shall be restricted to hours of 4:00 p.m. to 9:00 p.m.

(6) New and existing restaurants located as specified herein shall be limited to no sale of alcoholic beverages on the premises after 12:00 midnight, unless such restaurants receive a special use permit permitting sales after 12:00 midnight, subject to the procedural requirements in Zoning Code section 32-56.4 (b) and (f)."

Regarding nearby properties, the adjoining BB zoned 173 E. Main Street building contains the Days of Knights retail store. The applicants also own the building further to the west, zoned BB, which contains the Camera's Etc. business fronting on Main Street and several food and retail businesses at the rear. Further to the west on E. Main Street, again zoned BB, is the balance of the Trader's Alley subdivision [the full Schlosser & Dennis, L.L.C. property and the adjoining property to the west share that name from a prior development approval], containing a two-story facility with first floor commercial uses, including the Iron Hill Brewery, and upper floor apartments. The parcels immediately to the east of the site fronting on E. Main Street include the BB zoned Sinclair's Café, the Main Street Cleaners, and a commercial/office property at the southwest corner of E. Main and S. Chapel Streets. Several BB zoned commercial properties are located north of the site across E. Main Street from the property.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for "commercial (pedestrian oriented)" uses at the 173-175 E. Main Street location. In addition, the Plan's Downtown Economic Strategy suggests "Downtown Core District" land uses for the site. The Strategy describes the district as:

"... [the] center of Newark's central business district that is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments however, must be carefully and closely evaluated in terms of their impact of downtown parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environments; and potential significant negative impacts and nearby established businesses and residential neighborhoods."

BB District Off-street Parking and Option Procedure

The BB district off-street parking waiver program, adopted by the City to encourage quality pedestrian oriented development downtown, stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- “A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;
- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.”

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify, or deny Planning Commission approval, disapproval, or approval with conditions upon the recommendation of the Planning Director and/or the City Manager.

Also regarding the requested parking waiver, the City’s procedure specifies that applicants receiving such approvals must make a “payment in lieu of spaces” to the City to be used to improve parking downtown. The required payment in this case, based on an estimate of the cost of construction of surface level parking spaces provided by the Public Works Department (\$2,678), is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	\$669.50 (5% of cost)
Total:	\$669.50

Comments regarding the parking waiver request appear below under Departmental Comments.

Status of the Site Design

Please note that typically at this stage in the Newark subdivision review process for projects fronting on Main Street applicants are required to show the general site design and architectural character of the project. In this case, however, because the applicants are not required to apply for subdivision they are not formally required to submit color elevations of their proposed building addition. Fortunately, in the view of the Planning Department, in order to meet the spirit of our Subdivision and Development Regulations for downtown, the applicants have submitted, on a voluntary basis, the attached building elevation drawings for the Planning Commission's review and recommendation. The Department suggests, therefore, that the Commission evaluate the proposed building architectural design based on the design review criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix III (d).

Please note, in this regard, that also on a voluntary basis, the applicants agreed to review their proposed building elevation drawings with the Downtown Newark Partnership's Design Review Committee. After reviewing the drawings, the Committee indicated that because the proposal meets the DNP Design Guidelines, they recommend in favor the project. The Committee noted that the project was an "excellent example," of an in-fill development.

Be that as it may, the 173-175 E. Main Street development plan calls for a small two-story L-shaped building addition to be constructed in the alleyway between the 173 and 175 commercial properties. The parking area to the rear will need to be slightly redesigned to accommodate the bottom portion of the "L." The plan also shows that the existing curb cut on E. Main Street at the alleyway location will be replaced with raised curb. Please note, as well, that the applicants have indicated that they will place all existing electric lines in the alleyway underground. As indicated in the applicant's supporting letter, the Ali Baba restaurant will be expanded into the new first floor commercial space proposed in the alleyway.

Departmental Comments

1. To help limit the impact of the proposed apartment on downtown parking, the Planning Department suggests, as a condition of approval, the proposed dwelling unit should be deed restricted to a maximum of four tenants and tenants shall be

informed in writing that no reserved off-street parking will be available at the 173-175 E. Main Street site for their use. In this regard, as the Commission will recall, this proposed condition has been utilized for similar uses in the recent past for Main Street projects to help ensure that proposed upper floor residential uses for which parking waivers are requested are “pedestrian oriented.” This means, in our view, that prospective tenants must understand that if they wish to live at these locations, they must store their vehicles at off-site locations. For University of Delaware students, remote parking is available at south campus and, perhaps, other locations.

In this regard, therefore, we also suggest that the Planning Commission recommend, as a condition of approval, that the Schlosser & Dennis, L.L.C. portion of the Trader’s Alley site be redesigned to eliminate all existing parking currently set aside for upper floor apartment tenants. These spaces, unfortunately, are often left vacant when tenants are not in residence at the property – especially when the University of Delaware is not in session – and, perhaps more importantly, they eliminate off-street parking vital for downtown businesses.

2. The Planning Department suggests that the Planning Commission recommend as special use permit site design conditions:
 - A. The architectural design of the proposed facades of the buildings should be carried out on all building elevations visible from public ways.
 - B. Storage areas, mechanical and all utility hardware shall be screened from view from public ways in a manner consistent with the proposed architectural design.
3. The Planning Department suggests, as a condition of the parking waiver, that the property be deed restricted to require any commercial tenants to validate parking for customers for the nearby City municipal parking facilities.
4. The Public Works Department indicates the following:
 - In conjunction with the Planning Department’s suggestion above (1), the Public Works Department notes that any stacked parking, if it is to be used on the site, should be set aside for employee parking only.
 - The existing dumpster location for the site should be shown on the subdivision plan.
 - If not already in place, the applicants should secure a cross access agreement between themselves and the adjoining property owners at 177 E. Main Street for shared use of the existing parking area to the rear of their properties.
 - The Department indicates that the building addition will require handicapped accessibility from the street and the rear parking area.

5. The Electric Department indicates the following:

- The developer will be required to pay all costs for pole relocation required in the parking lot.
- Existing and proposed electric service meters must continue to feed from E. Main Street.
- The developer will be required to pay for radio read meters for any new services. The cost of such meters will be determined when the type of meter is specified.
- No trees growing over 18 ft. at maturity can be planted under the aerial lines on E. Main Street.

6. The Building Department indicates the following:

- The addition must be constructed in accordance with the International Building Code.
- All new construction at the site will be required to be sprinkled.
- Additional information will be necessary during the Building Permit review process regarding the impact of the new addition on the existing wall openings in the building at 173. E. Main St.

7. The Parks Department indicates that the developer will be required to protect the street tree in front of the Ali Baba site during construction. "Tree protection details" will be required through the construction improvement or building permit process.

8. The Water and Wastewater Department indicates that sanitary sewer and water service can be made available to the location.

Recommendation

Because the proposed 173-175 E. Main Street parking waiver and special use permits, with the departmental recommended conditions, will not have a negative impact on adjacent and nearby properties, because the proposed use conforms to the development pattern in the immediate area, and because the proposed use conforms to the land use guidelines in the City of Newark's Comprehensive Plan, the Planning Department suggests **that the Planning Commission approve the 173-175 E. Main Street parking waiver, with the relevant conditions in this report; and that the Commission make the following recommendations to City Council:**

- A. That City Council approve the 173-175 E. Main Street special use permit, for apartments in the BB district, with the relevant conditions in this report, as shown on the Tetra Tech plan dated, February 20, 2008; and,**

- B. The City Council approve the 173-175 E. Main Street special use permit for the sale of alcoholic beverages for consumption on the premises, with the relevant conditions in this report, as shown on the Tetra Tech plan, dated February 20, 2008.**

March 5, 2008

City of Newark Planning Department
220 Elkton Road
Newark, DE 19711

RE: Addition to 173 E. Main Street

The purpose of this addition is to fill the alley in between 173 East Main Street (Days of Knights), and 175 East Main Street (Ali Baba Restaurant). At this time, our intent is to lease this additional space to the current tenant at 175 East Main Street (Ali Baba Restaurant). If we can not negotiate terms with Ali Baba then we will use this space as additional retail.

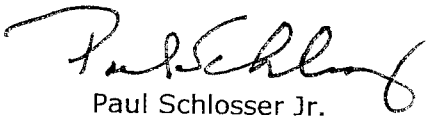
The plan for the second floor of this alley way addition is to build one 2 bedroom apartment.

This addition will require a parking waiver for (5) spaces. Not shown on the parking waiver, but included on Tetra Tech's drawings, are the (2) new spaces on Main Street that the City can use and install meters on. Currently this area is for access to the alley way.

This addition fits into the downtown business plan and current uses of the area by expanding an existing successful restaurant and adding apartments to the second floor. This would also eliminate an area currently plagued by people "hanging out", graffiti and trash.

This work will also be coordinated with the fire sprinkler system to be installed in the existing Ali Baba Restaurant, (3) existing apartments located on the second floor of 173 East Main Street, and the retail space on the first floor (Days of Knights). The fire main has already been installed under Main Street to service the new fire system.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Schlosser Jr.", with a stylized, cursive script.

Paul Schlosser Jr.